

FORM TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AF-5429

(Inmate Number)

Wesley Harper

(Name of Plaintiff)

SCI-Smithfield, P.O. Box 999, 1120

(Address of Plaintiff)

Pike Street, Huntingdon, Pa. 16652

CV 06-111
(Case Number)

COMPLAINT

vs.

Sue Hannah, Richard Norris, Capt. Myers,

Lieut. Painter, Jay Whitesel, V.L. Kor-

manic, Daryl Briggs, and John Palakovich.

(Name of Defendants)

**FILED
SCRANTON**

JAN 4 2006

PER

OMA
DEPUTY CLERK

TO BE FILED UNDER: 42 U.S.C. § 1983 - STATE OFFICIALS

28 U.S.C. § 1331 - FEDERAL OFFICIALS

I. Previous Lawsuits

A. If you have filed any other lawsuits in federal court while a prisoner please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

Yes, I have filed a lawsuit in federal court while
a prisoner. However, it's been so long since doing so
that I've long since forgotten the caption, case number,
year of filing and the name of the judicial officer assigned.

II. Exhaustion of Administrative Remedies

A. Is there a grievance procedure available at your institution?

Yes No

B. Have you filed a grievance concerning the facts relating to this complaint?

Yes No

If your answer is no, explain why not _____

C. Is the grievance process completed? Yes No **(See IV, 12)**

A. **Defendant** Sue Hannah **is employed**
as Unit Manager at SCI-Smithfield

B. **Additional defendants** Richard Norris, Hearing Examiner; Captain Myers, Chief of Security; Lieutenant Painter, Security Chief's Assistant; Jay Whitesel, Inmate Program Manager; V.L. Kormanic, Deputy of Centralized Services; Daryl Briggs, Deputy for Facility Management; John Palakovich, Warden.

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved,

1. **THE MISCONDUCT:** On 1/4/05, defendant Sue Hannah, based solely on the satiric content in a literary work of fiction entitled, The Nominees, authored by plaintiff, issued plaintiff a Disciplinary Misconduct.
2. On 1/5/05, defendant Sue Hannah, prior to any adjudication of the disciplinary misconduct, ordered plaintiff removed from his Raised-level Housing Unit and, thus, stripped of all earned pay and privileges.
3. On 1/7/05, defendant Norris, after plaintiff entered a plea of NOT GUILTY, found plaintiff GUILTY and imposed a sentence of 30 days in the Restrictive Housing Unit; aka, the Hole.
4. On 1/21/05, plaintiff filed an administrative appeal to defendants Whitesel, Kormanic and Briggs [hereafter referred to as the Program Review Committee, or PRC].

5. On 1/26/05, the PRC SUSTAINED defendant Norris' finding of GUILT.
6. **THE CONFISCATION:** On 1/9/05, defendant Myers ordered the confiscation of numerous Certificates and three (3) manuscripts; all of which, originals: The Nominees, The Honey Bun Police and Now Hiring! from plaintiff's personal property.
7. On 1/22/05 and 1/31/05, plaintiff wrote to Defendant Myers and inquired as to whether or not the confiscated items had been, or was going to be, returned to plaintiff.
8. On 2/4/05, defendant Painter responded, "The stories which you speak are in regards to staff and involved in a misconduct. They will not be returned to you."
9. On 2/11/05, plaintiff replied, in part, "The manuscripts were illegally confiscated, without just cause and, moreover, the [wrongful] confiscation of the three (3) manuscripts and Certificates is a violation of plaintiff's First Amendment; Freedom of Speech, Rights. Even first year law students know: Though an individual may disagree with the subject matter, content, or overall theme of a speech or written article, the First Amendment of the United States Constitution strictly prohibits any form of persecution or prosecution against anyone exercising such basic, fundamental right." Plaintiff then requested that "all confiscated manuscripts and Certificates be returned to him without further delay."
10. On 2/14/05, plaintiff filed an OFFICIAL GRIEVANCE asserting that the Certificates and manuscripts were wrongful confiscation.
11. On 2/22/05, plaintiff was summoned to defendant Painter's

office. And, in an obscure decision that did nothing to address the initial [wrongful] confiscation, defendant Painter returned all of the "numerous" Certificates, Now Hiring! and The Honey Bun Police--minus the last (Certificate) page. The Nominees, however, was NOT returned.

12. On 3/3/05, defendant Palakovich DENIED plaintiff's OFFICIAL GRIEVANCE. On 3/8/05, plaintiff filed an appeal to the office of Inmate Grievances/Appeals. Final review was rendered 11/4/05.
13. **CLAIMS FOR RELIEF:** The actions of defendant Hannah in issuing plaintiff a Disciplinary Misconduct, based solely on satiric content of a literary work of fiction, despite her knowledge of the above described Freedom of Speech violation, constituted deliberate indifference and denied the plaintiff freedom of speech in violation of the First Amendment to the United States Constitution.
14. The actions of defendants Norris in refusing to call witnesses requested by the plaintiff, and finding of GUILT, despite his knowledge of the above described freedom of speech and due process violations, constituted deliberate indifference and further denied plaintiff the freedom of speech and due process of law in violation of the First, Fourth and Fourteenth Amendments to the United States Constitution.
15. The failure of defendants Whitesel, Kormanic and Briggs in refusing to overturn the plaintiff's disciplinary conviction, despite their knowledge of the above described freedom of speech and due process violations, constituted deliberate indifference and further denied plaintiff freedom of speech, due process

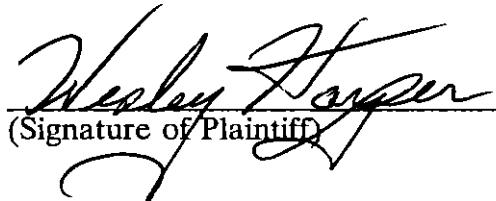
and equal protection of law in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution.

16. The actions of defendant Myers in ordering the confiscation of plaintiff's numerous Certificates and three (3) manuscripts, despite his knowledge of the above described freedom of speech and due process violations, constituted deliberate indifference and further denied plaintiff freedom of speech guaranteed and substantive due process of law in violation of the First, Fourth and Fourteenth Amendments to the United States Constitution.
17. The actions of defendant Painter in NOT returning The Nominees, or the Certificate page of The Honey Bun Police, despite his knowledge of the above described freedom of speech and due process violations, constituted deliberate indifference and further denied plaintiff freedom of speech and due process of law in violation of the First, Fourth and Fourteenth Amendments to the United States Constitution.
18. The actions of defendant Palakovich in DENYING plaintiff's OFFICIAL GRIEVANCE, despite his knowledge of the above described freedom of speech and due process violations, constituted deliberate indifference and further denied plaintiff the federal guarantees of freedom of speech and due process of law in violation of the First, Fourth and Fourteenth Amendments to the United States Constitution.
19. All defendants have acted, and continue to act, under color of state law at all times relevant to this complaint. Furthermore, all defendants are being sued in their individual and official capacity.

J. Relief

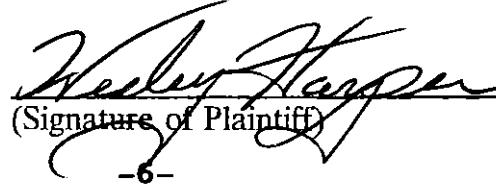
1. **Issue an injunction** ORDERING the PRC to: 1. Expunge from plaintiff's institutional record the conviction described herein and; 2. Return all confiscated items and; 3. Restore plaintiff's privileges/pay to status quo prior to incident.
2. **Award compensatory damages** in the amounts of: \$30,000 jointly and severally against defendants Hannah, Norris, and the PRC for the punishment/emotional injuries in connection with plaintiff's disciplinary proceedings. And, \$20,000 each against defendants Myers, Painter and Palaovich in connection with the confiscation of plaintiff's numerous Certificates and manuscripts.
3. **Award punitive damages** in the amounts of: \$20,000 each against defendants Hannah, Norris, and the PRC. And, \$10,000 each against defendants Myers, Painter and **Palakovich**.

Signed this 29th day of December, 2005.


(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

December 29th, 2005
(Date)


(Signature of Plaintiff)

**FORMS TO BE COMPLETED BY PRISONERS FILING A CIVIL RIGHTS COMPLAINT
UNDER 42 U.S.C. § 1983 or 28 U.S.C. § 1331**

COVER SHEET

THIS COVER SHEET CONTAINS IMPORTANT INFORMATION ABOUT FILING A COMPLAINT AND YOUR OBLIGATIONS IF YOU DO FILE A COMPLAINT. READ AND COMPLETE THE COVER SHEET BEFORE YOU PROCEED FURTHER.

The cost for filing a civil rights complaint is \$250.00.

If you do not have sufficient funds to pay the full filing fee of \$250.00 you need permission to proceed *in forma pauperis*. However, the court will assess and, when funds exist, immediately collect an initial partial filing fee of 20 percent of the greater of:

- 1) the average monthly deposits to your prison account for the past six months; or
- 2) the average monthly balance in your prison account for the past six months.

Thereafter, the institution in which you are incarcerated will be required to make monthly payments of 20% of the preceding month's deposits credited to your account until the entire filing fee is paid.

CAUTION: YOUR OBLIGATION TO PAY THE FULL FILING FEE WILL CONTINUE REGARDLESS OF THE OUTCOME OF YOUR CASE, EVEN IF YOUR COMPLAINT IS DISMISSED BEFORE THE DEFENDANTS ARE SERVED.

1. You shall file a complaint by completing and signing the attached complaint form and mailing it to the Clerk of Court along with the full filing fee of \$250.00. (In the event attachments are needed to complete the allegations in the complaint, no more than three (3) pages of attachments will be allowed.) If you submit the full filing fee along with the complaint, you DO NOT have to complete the rest of the forms in this packet. Check here if you are submitting the filing fee with the complaint form.

2. If you cannot afford to pay the fee, you may file a complaint under 28 U.S.C. § 1915 without paying the full filing fee at this time by completing the following: (1) Complaint Form; (2) Application To Proceed In Forma Pauperis; and (3) Authorization Form. You must properly complete, sign and submit all three standard forms or your complaint may be returned to you by the Clerk of Court. Check here if you are filing your complaint under 28 U.S.C. § 1915 without full prepayment of fees. XX

Please Note: If your case is allowed to proceed and you are awarded compensatory damages against a correctional facility or an official or agent of a correctional facility, the damage award will first be used to satisfy any outstanding restitution orders pending. Before payment of any compensatory damages, reasonable attempts will be made to notify the victims of the crime for which you were convicted concerning payment of such damages. The restitution orders must be fully paid before any part of the award goes to you.

DO NOT DETACH THE COVER SHEET FROM THE REST OF THE FORMS

Wesley Harper, AF-5429
P.O. Box 999 - Smithfield
1120 Pike Street
Huntingdon, Pa. 16652

December 29, 2005

United States District Court
Middle District of Pennsylvania
Clerk of Court
United States Post Office & Court House
Scranton, Pa. 18501

**RE: Filing of Civil Action §1983, Under 28 U.S.C. §1915
without paying the full filing fee at this time.**

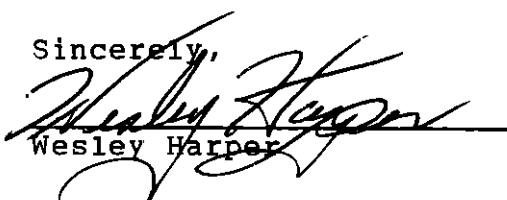
Dear Clerk,

Kindly file the enclosed Civil Action in the above mentioned court on my behalf.

Enclosures:

1. One (1) Complaint
2. Two (2) Applications To Proceed In Forma Pauperis
3. Three (3) Authorization Forms
4. One (1) Motion For Leave To File An Amended Complaint - Adding an Additional Defendant

Sincerely,



Wesley Harper

Wesley Harper, AF-5429
P.O. Box 999 - Smithfield
1120 Pike Street
Huntingdon, PA 16652

